

**CITY OF TAKOMA PARK TREE COMMISSION**

**IN THE MATTER OF:**

A Permit Application to Remove a Tree  
at 7222 Garland Avenue  
Takoma Park, Maryland

Case No. TC 2018-02

John Peperone  
Applicant

**ORDER**

**I. BACKGROUND**

On November 15, 2017, John Peperone (“Applicant”) filed a Tree Permit Application with the City of Takoma Park seeking a permit to remove two trees in connection with the proposed construction of an addition to the house on his property located at 7222 Garland Avenue, Takoma Park, Maryland (“Property”). This case was docketed as Case Number 2018-02.

On December 19, 2017, Jan Van Zutphen, the City of Takoma Park Urban Forest Manager, preliminarily denied the Application as to both trees. The Applicant timely filed a written appeal of the Urban Forest Manager’s preliminary decision to deny the permit in accordance with Section 12.12.110(A) of the *Takoma Park Code*.

On February 1, 2018, the City of Takoma Park Tree Commission (“Commission”) conducted a fact-finding hearing on the appeal of the preliminary denial. The Urban Forest Manager, the Applicant, and the Applicant’s wife attended the hearing. The Applicant, as the party appealing the Urban Forest Manager’s preliminary decision, has the burden of proof by a preponderance of the evidence. Section 12.12.110(H).

**II. EVIDENTIARY SUMMARY.**

The Applicant sought to remove two white oak trees, a 23” diameter-at-breast-height (“DBH”) tree located in the rear-center of his yard (hereinafter “Tree 1”) and a 24” DBH tree located in the rear-left of his yard (hereinafter “Tree 2”).

Tree 1 is located one or two feet from a small addition on the center of the back of the Applicant’s house. Exhibits 3, 10, 16. The Urban Forest Manager rated Tree 1 as being in good to fair condition, deeming it to have a sound and solid trunk, moderate growth rate, a moderate structure, moderate pest presence, a full but unbalanced crown, and a life expectancy of five to thirty years. Exhibits 2. He testified that, if the Applicant were permitted to remove Tree 1, he would have to plant five Category 4 deciduous trees or contribute the cost of planting five trees to the City’s Tree Replacement Fund. The Urban Forest Manager denied the Applicant’s assertion, contained in the Applicant’s written appeal, Exhibit 5, that he had acknowledged that Tree 1 was in decline and should be removed.

Tree 2 is located six or seven feet from the back-left corner of the Applicant’s house. Exhibits 3 and 22. The Urban Forest Manager rated Tree 2 as being in good to fair condition, deeming it to have a sound and solid trunk, a moderate growth rate, a fully sound structure, normal pest presence, a full but unbalanced crown, and a life expectancy of more than thirty years. Exhibits 2. He testified that, if the Applicant were permitted to remove Tree 2, he would have to plant six Category 4 deciduous trees or contribute the cost of planting six trees to the City’s Tree Replacement Fund.

The Urban Forest Manager testified that the primary reason he denied the permit was the healthy condition of the trees.

The Urban Forest Manger testified that white oak is a very desirable species that provides many environmental benefits and has a long-life expectancy. He testified that removing the two white oaks would cause significant environmental degradation and that removing the trees would make it more likely that other nearby trees would fail.

The Applicant’s proposed L-shaped addition would extend his house approximately ten feet into the back yard for the length of the house and an additional approximately five feet beyond the

back right corner of the house and then wrap around the back right corner and extend the width of the house by approximately five feet on the back half of the right side of the house.

The Urban Forest Manager testified that if the permit to remove the trees was denied, the Applicant would not be able to build the addition as proposed. He testified that he met with the Applicant and the Applicant's architect to try to understand what design options existed to allow for the preservation of the trees.

The Applicant testified that his proposed addition is a modest addition to his small Property. He testified that there are three other large white oak trees on his Property and that he has planted a black tupelo, a magnolia tree, and several arborvitae on his Property. He testified that the addition would be thirty feet wide and would include a solarium, a living room, and a kitchen on the back of the house and a new bathroom over the existing garage. He testified that it would be a standard addition for the neighborhood and that building a smaller addition would harm his property value.

The Applicant testified that he was not willing to consider building an addition on the front of the house instead of the back because the front yard was a steep hill. He testified that any modification to the design of his addition that would facilitate the preservation of Tree 2 would be unacceptable. He testified that he did not want to build a narrower addition that extends further into the back yard, as some of his neighbors had done, out of consideration for his neighbors. The Applicant testified that the Urban Forest Manager, when he met with the Applicant and his architect, said that he would grant the permit to remove Tree 1 if the Applicant would revise his plan to protect Tree 2. The Applicant questioned whether this was proper.

The Applicant testified that he would sue the City for damages if the Commission were to deny his permit. He testified that the denial of his right to build his proposed addition would be a taking of his property and that the City would have to pay him for the use of his trees.

**III. FINDINGS OF FACT.**

Section 12.12.120(B) requires the Tree Commission to consider nine factors in approving the Application, disapproving the Application, or approving the Application with modifications or conditions. The Tree Commission has considered these criteria and makes the following findings.

**1. The extent to which tree clearing is necessary to achieve the proposed development or land use, and, when appropriate, the potential ameliorating effects of any tree protection plan that has been submitted or approved.**

The Commission finds that the removal of Tree 1 is necessary to allow the Applicant to build an addition on the back of his house because Tree 1 is located one to two feet from the existing house and is near the center of the house. The Commission finds that building an addition on the front of the Applicant's house is not feasible because of the small size and steep slope of his front yard. Exhibits 3 and 6. The record does not contain sufficient evidence for the Tree Commission to determine whether it is feasible for the Applicant to build a reasonable addition on the rear of his house while preserving Tree 2.

**2. The number and type of replacement trees and, if appropriate, any reforestation plan proposed as mitigation for the tree or trees to be removed.**

The Tree Commission finds that the Applicant would be required to replace Tree 1 with five deciduous 1 ½" caliper nursery stock trees or contribute \$875.00 to the City's Tree Replacement Fund and that the Applicant would be required to replace Tree 2 with six deciduous 1 ½" caliper nursery stock trees or contribute \$1,050.00 to the City's Tree Replacement Fund. The Commission finds that it would take many years before the replacement trees would provide the level of shade and other environmental benefits provided by the white oaks proposed to be removed.

**3. Any hardship the Applicant will suffer from a modification or rejection of the permit application.**

The Tree Commission finds that the Applicant will not be able to build an addition in the precise configuration he proposed if the Commission does not permit him to remove both trees.

**4. The desirability of preserving any tree by reason of its age, size, or outstanding quality.**

The Tree Commission finds that it is desirable to preserve the trees because of their large sizes (23" and 24" DBH), and healthy condition.

**5. The extent to which the area would be subject to environmental degradation due to removal of the tree or trees.**

The Tree Commission finds that there would be significant environmental degradation if the trees were removed because of their large size and the environmental benefits provided by white oaks. In addition, the removal of the two large white oaks would eliminate the stabilizing support that the trees' roots provide and the wind breaking effect that the trees provide for the trees that would remain in the area, thereby increasing the likelihood of further tree loss.

**6. The impact of the reduction in tree cover on adjacent properties, the surrounding neighborhood, and the property on which the tree or trees are located.**

See the discussion of criteria number 5, above.

**7. The general health and condition of the tree or trees.**

The Tree Commission finds, based on the inspections of the Urban Forest Manager and the photographs of the trees, that they are in good and good to fair health and sound condition.

**8. The desirability of the tree species as a permanent part of the City's urban forest.**

The Tree Commission finds that white oak is a desirable native species and is one of the most important native trees for pollinators and many other forms of wildlife.

**9. The placement of the tree or trees in relation to utilities, structures, and the use of the property.**

The Tree Commission finds that the Tree does not interfere with the existing utilities and structures on the Applicant's Property or the current use of the Applicants' Property. The Commission finds that Tree 1 interferes with the construction of any addition on the back of the Applicant's house and that Tree 2 interferes with the addition proposed by the Applicant.

**IV. CONCLUSION AND DECISION.**

The Tree Commission, after considering the documentary record and the hearing evidence, makes the foregoing findings of fact under on the statutory criteria for permit decisions set forth in Section 12.12.120(B) and concludes that the facts of this case support the preservation of Tree 1 and Tree 2. The Tree Commission finds that the Applicant failed to satisfy his burden of proof that the Urban Forest Manager’s decision should be overturned.

The record contains no evidence that that it is not possible to alter the design of the Applicant’s proposed addition so as to obviate the need to remove Tree 2. The Applicant did not present any evidence of the impact of alterations to his plan would have upon the size, appearance, or functionality of the addition.

Therefore, the Commission finds, after applying the pertinent statutory criteria, that the desirability of preserving the two large, healthy, white oaks, outweighs any demonstrated adverse impact or other hardship on the Applicant, and shall affirm the decision of the Urban Forest Manager.

**V. ORDER.**

UPON CONSIDERATION of the foregoing, it is this 9th day of March 2018, by the City of Takoma Park Tree Commission:

ORDERED, that the Tree Removal Permit Application filed by John Peperone for removal of one 23” DBH white oak and one a 24" DBH white oak tree from 7222 Garland Avenue, Takoma Park, Maryland, is DENIED.

**CITY OF TAKOMA PARK TREE COMMISSION**

*Tina Murray/KS*  
Tina Murray, Commission Chair

*Carol Hotton/KS*  
Carol Hotton, Commissioner

*Bruce Levine/KS*  
Bruce Levine, Commissioner

### **Notice of Appeal Rights**

Section 12.12.110(L) of the *Takoma Park Code* provides that any party to the proceedings before the Tree Commission and who is aggrieved by this decision may seek judicial review of the decision by filing a petition for judicial review in accordance with Title 7, Chapter 200, Judicial Review of Administrative Agency Decisions, of the Maryland Rules of Procedure.